

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF MADISON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Todd Fee,

Petitioner,

vs.

NO: 09 WC 48188

14IWCC0157

Olin Brass,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013, is hereby affirmed and adopted.

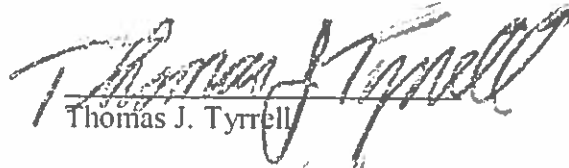
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

141WCC0157

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 04 2014  
TJT:yl  
o 2/25/14  
51

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

  
Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**FEE, TODD**

Employee/Petitioner

Case# **09WC048188**

**OLIN BRASS**

Employer/Respondent

141WCC0157

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC  
TODD J SCHROADER  
3673 HWY 111 PO BOX 488  
GRANITE CITY, IL 62040

0299 KEEFE & DEPAULI PC  
MICHAEL F KEEFE  
#2 EXECUTIVE DR  
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF Madison )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION

Todd Fee  
 Employee/Petitioner

Case # 09 WC 48188

v.

Consolidated cases: \_\_\_\_\_

Olin Brass  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on April 25, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

14IWCC0157

FINDINGS

On July 24, 2009, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is not, causally related to the accident.

In the year preceding the injury, Petitioner earned \$47,486.40; the average weekly wage was \$913.20.

On the date of accident, Petitioner was 45 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

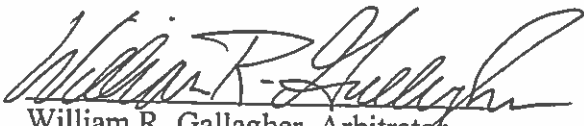
Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's conclusions of law attached hereto, claim for compensation is denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
William R. Gallagher, Arbitrator  
ICArbDec p. 2

June 2, 2013

Date

JUN - 7 2013

## Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on July 24, 2009. According to the Application, Petitioner was pulling a man saver and hurt both of his hands and arms which caused disability to the left and right extremities. Respondent disputed liability in this case on the basis of accident and causal relationship.

Petitioner worked for Respondent as a crane operator and worked in that capacity for 17 of the 23 years he has been employed by Respondent. Petitioner testified that his job of a crane operator required him to control the movement of the cranes by using a remote control type box that hangs around the operator's waist. This box has a number of plastic covered switches that are approximately two inches in length. Moving these switches directs the crane to lift, grasp, release and move the various heavy objects in the plant.

Petitioner testified that he operates the cranes every day and that his work day starts at 8 AM. Petitioner's first task is to inspect the cranes to make certain that they are in proper working order. Petitioner will then check the work orders to determine what needs to be moved. Petitioner testified that he rarely gets any breaks while at work, has lunch at 12 PM and clocks out at 4 PM. Petitioner also stated that his job includes operating a motorized pallet jack and moving pallets.

Respondent tendered into evidence a DVD of approximately 20 minutes in length which showed other employees operating the control box and pallet jack as well as driving a forklift. The video showed that the control box was hanging from a harness and the top of it was just at or below the belt level. The arms of the individual operating the control box hang not quite to full extension and the elbows are slightly flexed with the fingers operating the levers. There is no observable repetitive motion of the elbows when this device is being operated. The video also showed the operation of the pallet jack. This device is operated with a handle that rises to waist level. The jack appeared to move easily on the floor whether it was empty or with pallets. The elbows are slightly bent during the operation of the pallet jacks; however, no repetitive movement of the elbows was observable. Finally, the video showed another employee driving a forklift; however, this is not a task that Petitioner performs on any regular basis. At trial, Petitioner testified that he watched the video and that it was not accurate because he was required to work at a much faster pace than what it depicted.

Petitioner testified that over time he began to experience problems in this elbows and tingling in his hands, in particular, the ring and little fingers of both hands. While Petitioner believes that he developed these upper extremity issues over a period of time, he also stated that something happened on July 24, 2009, when he pulled apart a man saver. However, he testified he had experienced some symptoms prior to that date.

Petitioner completed an accident report on July 24, 2009, and that report was received into evidence at trial. The report stated that after the Petitioner pulled on the man saver with his hands that he experienced an onset of tingling in both of his hands afterwards. In the report there was no mention of any symptoms prior to July 24, 2009, nor was there any reference to elbow symptoms. As stated herein, the Application for Adjustment of Claim stated that the accident of

July 24, 2009, was the cause of the injury, there was no allegation of this being a repetitive trauma injury.

Petitioner was initially seen by Dr. Shaping Sun, Respondent's Medical Director, (his records were not tendered into evidence) who referred him to Dr. Dan Phillips for nerve conduction studies. Dr. Phillips saw Petitioner on August 4, 2009, and noted that Petitioner previously underwent bilateral carpal tunnel release surgeries by Dr. Crandall in 2005. At that time, Petitioner reported to Dr. Phillips that he had a 100% relief of symptoms following the surgery until a work event of July 24, 2009. Dr. Phillips' report noted "He reports pulling at work and indicates he suddenly developed tingling in both upper extremities at the same time, worse on the left which had never experienced before. He also reports bilateral hand, but not elbow pain."

On August 27, 2009, Petitioner was evaluated by Dr. Mitchell Rotman, an orthopedic surgeon. This evaluation was also at the request of Dr. Sun. Petitioner informed Dr. Rotman that he previously had carpal tunnel surgery in 2005 and that when he was pulling on a man saver on July 24, 2009, his fingers went numb, primarily the ring and little fingers. Dr. Rotman examined Petitioner and reviewed the nerve conduction studies that had been performed by Dr. Phillips on August 4, 2009. When Petitioner was examined by Dr. Rotman, he showed him the position of his arms when operating the crane operator control box. Dr. Rotman noted that there was nothing about the positioning of Petitioner's elbows that would irritate the ulnar nerve at the elbow. Dr. Rotman noted that the nerve conduction studies were only mildly positive and he opined that Petitioner's operating the crane box would not put the ulnar nerves at the elbow level at any risk.

On April 5, 2010, Petitioner sought medical treatment from Dr. Michael Beatty and completed an information sheet which described his use of the remote control box to operate the cranes. Petitioner described this as requiring repetitive motion of the crane box levers. There was no reference to Petitioner having an onset of symptoms when he pulled the man saver apart on July 24, 2009. Dr. Beatty's records of April 5, 2010, described the exam findings as "basically negative" and he recommended that Petitioner have another set of nerve conduction studies performed. Respondent declined to authorize the studies on the basis that they were not for a work-related condition. Dr. Beatty's entry of April 28, 2010, described the condition as being bilateral carpal tunnel syndrome.

Dr. Beatty was deposed on November 2, 2010, and his deposition was tendered into evidence at trial. Dr. Beatty opined that Petitioner had recurrent carpal tunnel syndrome and he opined that Petitioner's work activity as a crane operator either caused or aggravated the condition. In regard to the elbows, Petitioner had no complaints and examination of the elbows was negative. When Dr. Beatty saw Petitioner on November 11, 2010, he examined the elbows and this time, the examination was positive for cubital tunnel syndrome.

Dr. Rotman examined Petitioner for the second time on November 15, 2010. In addition to examining the Petitioner, Dr. Rotman also reviewed medical records and the DVD of other employees performing Petitioner's job duties. Dr. Rotman's examination was negative for bilateral carpal tunnel syndrome but he did agree that Petitioner had bilateral cubital tunnel syndrome for which transposition surgeries might be indicated. In regard to causality, Dr.

Rotman opined that it was not related either to the specific pulling incident of July 24, 2009, or the repetitive use of the crane control box.

Dr. Beatty was deposed again on August 2, 2011, and this deposition testimony was also received into evidence at trial. Prior to his being deposed, Dr. Beatty also watched the DVD of other employees performing Petitioner's job duties. Dr. Beatty opined that Petitioner's upper extremity conditions (both carpal tunnel and cubital tunnel syndromes) were related to his repetitive work activities; however, Dr. Beatty stated that he did not know if Petitioner's bilateral hands/elbows complaints came on gradually or suddenly. At that time, Dr. Beatty recommended that Petitioner have both carpal tunnel and cubital tunnel surgeries performed. Petitioner remained under Dr. Beatty's care and Dr. Beatty performed cubital tunnel release surgeries on the right and left elbows on March 21 and April 18, 2012, respectively. Petitioner recovered from the surgeries and was released by Dr. Beatty to return to work without restrictions on June 4, 2012.

Dr. Rotman was deposed on January 31, 2011, and his deposition testimony was received into evidence at trial. Dr. Rotman's testimony was consistent with his medical reports and he reaffirmed his opinion that Petitioner's upper extremity problems were not related to either a single incident or repetitive activities.

#### Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain an accidental injury either as a result of a specific event or repetitive trauma arising out of and in the course of his employment for Respondent and that his condition of ill-being is not related to any work activities.

In support of this conclusion the Arbitrator notes the following:

Based upon the testimony and the information contained in the record it is unclear whether Petitioner claims his bilateral cubital tunnel syndrome was caused by a specific accident or repetitive trauma.

The Application for Adjustment of Claim alleges only a specific accident; however, Dr. Beatty only opined that repetitive trauma caused the condition. There were no medical records tendered into evidence which indicated a gradual onset of symptoms. Further, when Dr. Beatty saw Petitioner on April 5, 2010, the only diagnosis was that of carpal tunnel syndrome because there were no positive findings in respect to the elbows.

Dr. Rotman examined Petitioner on two separate occasions and opined that neither a specific event nor a repetitive trauma was the cause of Petitioner's elbow conditions.

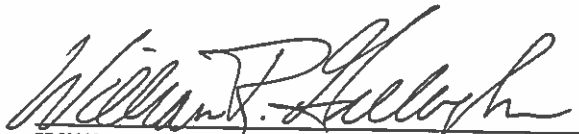
The Arbitrator finds the opinion of Dr. Rotman to be more credible than the opinion of Dr. Beatty.



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The Arbitrator watched the DVD and notes that the work activities are not particularly strenuous and that the elbows are not flexed to any significant degree. Even if the work is, in fact, performed at a faster pace than what was observed in the video, it should not change how strenuous the activity is or the flexion of the elbows.

In regard to disputed issues (J), (K) and (L), the Arbitrator makes no conclusions of law because these issues are rendered moot.

  
William R. Gallagher, Arbitrator



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF MC LEAN )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nicholas Thompson,

Petitioner,

vs.

NO: 11 WC 36742

Bridgestone America, Inc.,

14IWCC0158

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 19, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0158

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 04 2014  
TJT:yl  
o 2/25/14  
51

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

  
Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**THOMPSON, NICHOLAS**

Employee/Petitioner

Case# **11WC036742**

**BRIDGESTONE AMERICA, INC.**

Employer/Respondent

**14IWCC0158**

On 6/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0225 GOLDFINE & BOWLES PC  
ATTN: WORK COMP DEPT  
124 S W ADAMS ST SUITE 200  
PEORIA, IL 61602

0481 MACIOROWSKI SACKMANN & ULRICH  
JEREMY SACKMANN  
10 S RIVERSIDE PLZ SUITE 2290  
CHICAGO, IL 60606

141VCC0158

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF MCLEAN )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

NICHOLAS THOMPSON,  
 Employee/Petitioner  
 v.  
BRIDGESTONE AMERICA, INC.,  
 Employer/Respondent

Case # 11 WC 36742

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **November 27, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?  
 B. ☐ Was there an employee-employer relationship?  
 C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?  
 D. ☐ What was the date of the accident?  
 E. ☐ Was timely notice of the accident given to Respondent?  
 F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?  
 G. ☐ What were Petitioner's earnings?  
 H. ☐ What was Petitioner's age at the time of the accident?  
 I. ☐ What was Petitioner's marital status at the time of the accident?  
 J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?  
 K. ☒ Is Petitioner entitled to any prospective medical care?  
 L. ☒ What temporary benefits are in dispute?  
     ☐ TPD      ☐ Maintenance      ☒ TTD  
 M. ☐ Should penalties or fees be imposed upon Respondent?  
 N. ☐ Is Respondent due any credit?  
 O. ☐ Other: \_\_\_\_\_

14IWCC0158

**FINDINGS**

On the date of accident, **August 19, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is in part* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$28,600.00**; the average weekly wage was **\$550.00**.

On the date of accident, Petitioner was **25** years of age, *single* with **one** dependent child.

Petitioner *has in part* received all reasonable and necessary medical services.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$ 684.96** for TTD, **\$ 0.00** for TPD, **\$ 0.00** for maintenance, and **\$ 0.00** for other benefits, for a total credit of **\$ 684.96**.

Respondent is entitled to a credit of **\$ 0.00** under Section 8(j) of the Act for medical benefits.

**ORDER**

Respondent shall pay Petitioner temporary total disability benefits of **\$366.66/week** for **1-3/7** weeks, commencing **August 20, 2011** through **September 1, 2011**, after deduction of the three (3) day statutory waiting period, as provided in Section 8(b) of the Act.

All other periods of temporary total disability benefits claimed by Petitioner in this matter during this hearing are hereby denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator      JOANN M. FRATIANNI

**June 14, 2013**  
Date

JUN 19 2013

***C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?***

Petitioner worked for Respondent as a tire builder. Petitioner testified he began employment with Respondent on July 11, 2011, working primarily the night shift. While so employed, Petitioner on August 19, 2011 fell over a CAT track while performing his job as a tire builder. Following this incident, Petitioner testified he experienced immediate pain in his left leg, thigh and groin area, and noticed a bruise to his left knee.

Petitioner sought treatment at the emergency room of St. Joseph Hospital. A history was recorded of falling over a CAT track. Petitioner was examined, prescribed crutches, medication and was released.

Petitioner testified that Respondent then referred him to St. Joseph Occupational Health Clinic. Petitioner was seen there on August 23, 2011, and was prescribed medication and crutches, and referred to Dr. Lawrence Nord, an orthopedic surgeon. Petitioner was diagnosed with a left groin and knee sprain along with a thigh contusion.

Petitioner saw Dr. Nord on August 25, 2011. Dr. Nord recorded a history of injury consistent with Petitioner's testimony in this matter. Dr. Nord diagnosed left lower extremity contusion with quadriceps muscle strain. Dr. Nord prescribed therapy, ice, medications, and crutches.

Based upon the above, the Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent on August 19, 2011.

***F. Is the Petitioner's present condition of ill-being causally related to the injury?***

Prior to this accident, Petitioner testified that he suffered an injury on November 18, 2009, when a header fell on his back that weighed 600-700 pounds. Petitioner received treatment with Dr. Moody, an in-plant physician, and Dr. Hughes, his personal physician, and also saw Dr. Russo, an orthopedic surgeon. Petitioner received physical therapy and multiple tests including CT and MRI scans. Petitioner testified the primary focus of treatment was to his lower back, but when he experienced back pain it would travel to his left groin, hip and thigh. Petitioner settled this case for 5% disability to his person on May 18, 2011.

Petitioner testified that following that back injury, he was released for restricted work in the form of a 30 pound lifting restriction. He found work with Meyer Zephyr Services working on small engines and cars, which he performed for a few months starting in April of 2010. Petitioner also performed tire changes and testified he would experience back pain, left groin pain and hip pain.

Petitioner then applied for work with Respondent. He underwent a required pre-employment physical examination that he passed. Petitioner testified he then began working as a tire builder on July 11, 2011. This job required him to grab sheets of rubber with another employee. One person was at each end of the sheet pulling it so that it did not fold. Petitioner estimated these sheets weighed 10-15 pounds. Petitioner testified that prior to his hiring on July 11, 2011, he did not experience left hip, groin, leg or back pain.

Petitioner testified that after a period of training he began working nights for a day or two prior to the injury date. Following this accident, Petitioner reported to his supervisor that he injured his left knee and thought he mentioned the left hip. Petitioner denied taking medication just prior to this accident, which testimony was contradicted by the emergency room records of St. Joseph Hospital, which indicated he was taking Oxycodone, Percocet and Hydcodone. Petitioner reported pain on the front of his left thigh and his left knee only which was recorded by a pain drawing.



When Petitioner saw Dr. Mary Yee Chow at St. Joseph Occupational Health Clinic on August 23, 2011, he gave a history of injury to his left testicle, knee, ankle and the left side of his body. No mention of the hip was made. Dr. Chow diagnosed left groin strain, left thigh contusion and left knee sprain, and referred Petitioner to Dr. Nord.

Petitioner saw Dr. Nord on August 25, 2011, who also failed to record a history of injury or symptoms to the left hip. Petitioner testified Dr. Nord prescribed physical therapy and a left hip x-ray. Petitioner commenced physical therapy on August 29, 2011 and Dr. Nord released him to return to work with no restrictions on September 1, 2011. The physical therapist on August 31, 2011 recorded that the left leg felt much better and that he stopped taking Vicodin days ago. Petitioner indicated his left knee popped when bending with tightness while cycling.

Petitioner testified he returned to work after September 1, 2011. He worked a partial shift and experienced an increase in his pain symptoms. Petitioner saw Dr. Nord on September 6, 2011, who diagnosed a left lower extremity contusion, and quadriceps muscle strain. Dr. Nord referred Petitioner to see Weiland for a hernia examination. Petitioner did not return to see Dr. Nord after that date.

Petitioner saw Dr. Weiland on September 7, 2011, and complained of sharp groin pain that worsened with leg movement. Petitioner also complained of abdominal pain. Petitioner indicated to Dr. Weiland that his groin pain developed while undergoing physical therapy prescribed by Dr. Nord. Dr. Weiland diagnosed a left inguinal hernia with possible femoral components and prescribed surgery. On October 4, 2011, Dr. Weiland authored a letter indicating he would not be performing the surgery and he transferred care to another surgeon. A CT scan performed of the left femur was performed on September 30, 2011. This was described as being negative for a femoral hernia.

Respondent introduced into evidence a surveillance video (Rx17) performed on September 7, 2011, while Petitioner was leaving Dr. Weiland's office. Petitioner is seen leaving the office using a crutch and having difficulty walking. A few hours later, Petitioner was filmed walking into a local Wal-Mart with no limitations as to his mobility.

Petitioner then saw Dr. Grieco for the hernia condition, who found no evidence of a hernia. Petitioner was advised to follow up with his personal physician. Following the CT scan, Dr. Grieco reexamined Petitioner on October 3, 2011, who again noted no hernia and advised him to see his personal physician.

Petitioner then sought treatment with Dr. Rians at Great Plains Orthopedics. No history of injury was recorded. Petitioner then saw Dr. Maurer on November 8, 2011, and denied any symptoms to his left hip. An MRI arthrogram to the left hip was also performed and was described as being normal. Petitioner last saw Dr. Maurer in January, 2012.

Dr. Maurer testified by evidence deposition that he reviewed an MRI arthrogram and felt it was normal for the left hip. X-rays were also reviewed which revealed good joint space maintenance with no significant arthritis. A positive cross over sign was noted on an x-ray and Petitioner walked with a flexed hip limp. Range of motion to the hip was quite limited. Dr. Maurer prescribed femoroacetabular impingement. Dr. Maurer administered an injection to the left hip that created a relief of symptoms. According to Dr. Maurer, this indicated the symptoms were from the hip. Dr. Maurer testified that 20% of MRI results are false negatives and believed Petitioner had a labral tear. A proposed arthroscopy would confirm such a diagnosis.

Dr. Maurer testified that the condition of ill-being to the left hip was caused by this accidental injury and that he based this opinion on the history Petitioner provided to him which included no previous hip difficulties. Dr. Maurer admitted that he did not review records of treatment after this accident other than Dr. Rian's notes.

Dr. Maurer also admitted that if Petitioner had a similar condition in 2009, that condition could have recurred without trauma. Dr. Maurer testified that a positive cross over sign revealed a developmental abnormality that can create the same hip pain without trauma.

Dr. Maurer further testified that all radiographic tests and MRI's performed on Petitioner were negative with the exception of a cam deformity and the positive cross over. Dr. Maurer testified that the cam deformity and cross over were not caused by this accidental injury nor aggravated by it.

Dr. Maurer was also shown the surveillance tapes (Rx17) and felt Petitioner's ability to walk clearly improved from the first portion of the video to the end. Dr. Maurer noted that early in the video outside Dr. Weiland's office, Petitioner was not moving his left leg at all and was using a crutch. Later, he looked like he was moving pretty good. Dr. Maurer testified that having viewed the tape, it would cause him to pause and rethink whether surgery was recommended.

Respondent introduced into evidence the opinion of Dr. Cohen who felt there was no change in the underlying left hip condition as a result of this accidental injury. Dr. Cohen did review all prior medical records of treatment and those medical records of treatment following this accident in arriving at his opinion.

Based upon the above, the Arbitrator does not find the opinion of Dr. Maurer that the left hip condition was caused by this accidental injury to be credible based upon his failure to review the prior medical records of treatment and those medical records of treatment following this accident.

Based upon the above, the Arbitrator finds the condition of ill-being to the left hip as diagnosed above is not causally related to the accidental injury of August 19, 2011. Based further upon the above, the Arbitrator finds that the claimed condition of ill-being in the form of a hernia as diagnosed above is not causally related to the accidental injury of August 19, 2011. It appears that the existence of the hernia has been ruled out. Based further upon the above, the Arbitrator finds that the condition of ill-being to the lower back is not causally related to the accidental injury of August 19, 2011. The Arbitrator further notes that Petitioner suffered from symptoms relating to his left hip, a hernia and lumbar spine prior to this accidental injury.

Finally, based upon the above, the Arbitrator finds the condition of ill-being to the left knee to be causally related to the accidental injury of August 19, 2011.

***J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?***

Petitioner introduced into evidence medical charges that were incurred after this accident, and after September 1, 2011, which remain outstanding.

See findings of this Arbitrator in "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses incurred for treatment rendered after September 1, 2011 are hereby denied. The Arbitrator notes that no additional treatment to the left knee was rendered after that date and all other conditions claimed by Petitioner are found not causally related to this accidental injury.

***K. Is Petitioner entitled to any prospective medical care?***

See findings of this Arbitrator in "F" above.

Based upon the findings of this Arbitrator in "F" above, the Arbitrator further finds the prescription for additional medical care, surgery and treatment to the left hip is not causally related to this accidental injury. On the basis of this finding, the Arbitrator declines to award any prospective medical care and treatment to the left hip in this case.

***L. What temporary benefits are in dispute?***

Petitioner claims as a result of this accidental injury he was temporarily and totally disabled from gainful employment as a result of this injury for the period commencing August 20, 2011 through November 27, 2012, and is entitled to receive compensation from Respondent for this period of time.

Respondent claims that Petitioner was only temporarily and totally disabled from gainful work as a result of this injury commencing August 20, 2011 through September 1, 2011.

See findings of this Arbitrator in "F" above.

Petitioner was initially treated for left knee symptoms and a thigh contusion and was kept off of work for these conditions until September 1, 2011. On that date, Dr. Nord released him to restricted work.

Based upon the above, the Arbitrator finds that Petitioner is entitled to receive temporary total disability benefits from Respondent commencing August 20, 2011 through September 1, 2011. All other claims of such compensation made by Petitioner in this matter are denied.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="button" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAWN RUNDGREN,

Petitioner,

vs.

NO: 11 WC 43740

14IWCC0159

ADVOCATE GOOD SAMARITAN HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical treatment and temporary total disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for additional proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

We modify the Decision of the Arbitrator with respect to prospective medical treatment for Petitioner's right shoulder and deny such treatment. The Arbitrator awarded Petitioner prospective medical treatment as ordered by Dr. McNally and Dr. Freedberg for her lumbar spine

14IWCC0159

and right shoulder conditions. The Commission affirms the Arbitrator's award of prospective medical treatment for Petitioner's lumbar spine as ordered by Dr. McNally.

We decline to award Petitioner prospective medical treatment from Dr. Freedberg for her right shoulder. On May 23, 2012, Dr. Freedberg noted that despite Petitioner's persisting complaints of some pain, her shoulder pain continued to improve and her range of motion and strength were much better. Dr. Freedberg found Petitioner reached maximum medical improvement with respect to her right shoulder and released her to return to work without right shoulder restrictions. Dr. Freedberg discharged Petitioner from his care as of May 23, 2012, with follow up as needed. Since Petitioner is no longer treating with Dr. Freedberg and she reached maximum medical improvement with respect to her right shoulder, no prospective medical treatment is currently necessary. As such, we do not award Petitioner prospective medical treatment for her right shoulder as provided by Dr. Freedberg. Petitioner is entitled to prospective medical treatment only for her lumbar spine from Dr. McNally.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$448.98 per week for a period of 37-6/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$8,371.87 for medical expenses and prospective medical treatment for Petitioner's lumbar spine under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0159

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$15,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 05 2014  
TJT: kg  
O: 1/14/14  
51

  
Thomas J. Tyrrell

  
Daniel R. Donohoo

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

RUNDGREN, DAWN M

Employee/Petitioner

Case# 11WC043740

ADVOCATE GOOD SAMARITAN  
HOSPITAL

Employer/Respondent

14IWCC0159

On 2/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0311 KOSIN LAW OFFICE LTD  
DAVID X KOSIN  
134 N LASALLE ST SUITE 1340  
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC  
SEAN ABERNATHY  
20 N CLARK ST SUITE 1000  
CHICAGO, IL 60602



STATE OF ILLINOIS )

COUNTY OF COOK

14<sup>SS.</sup> IWCC0159

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

**DAWN M. RUNDGREN**

Employee/Petitioner

Case # 11 WC 43740

v.

Consolidated cases: NONE

**ADVOCATE GOOD SAMARITAN HOSPITAL**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **August 17, 2012 and February 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **November 7, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

14IWC00159

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$35,020.63**; the average weekly wage was **\$673.47**.

On the date of accident, Petitioner was **45** years of age, *single* with **2** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$10,326.54** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$10,326.54**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

## ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$448.98/week** for **37-6/7** weeks and continuing, commencing **11/8/11 through 2/12/12** and from **3/3/12 through 8/17/12**, the first date if hearing, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$10,326.54** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of **\$8,371.87**, as provided in Section 8(a) of the Act. The parties have stipulated that the medical bills will be paid directly to the providers, subject to Section 8.2 of the Act.

Respondent shall authorize and pay the reasonable costs of (subject to Section 8.2 of the Act) the treatment ordered by Dr. Thomas McNally and Dr. Howard Freedberg for petitioner's low back and right shoulder conditions.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator



Date

2/13/2013

Dawn M. Rundgren

v.

Case # 11 WC 43740

Advocate Good Samaritan Hospital

14IVCC0159

**FINDINGS OF FACT:**

On November 7, 2011, the petitioner, Dawn M. Rundgren, was a Unit Information Coordinator for the respondent, Advocate Good Samaritan Hospital. Petitioner's duties included performing clerical work, data input and patient intake. She estimates that 50% of her time was spent on her feet and 50% was seated clerical work.

Petitioner candidly admits to sustaining an unrepaired right shoulder labral tear in 2002, for which she pursued a claim under the Illinois Workers' Compensation Act. Petitioner testified that leading up to her injury on November 7, 2011, she continued to experience some limitation of motion from her previous shoulder injury, but that her pre-existing condition did not prevent her from performing all the duties of her job with the respondent.

Petitioner also testified that she was involved in a motor vehicle accident ("MVA"), which occurred on December 11, 2009. Petitioner testified that the auto accident caused a low back injury, which, in turn, caused her to experience pain and numbness from her low back into her right leg. She also admitted to experiencing some transitory numbness into her left lower leg and foot. Petitioner offered un rebutted testimony that she was able to return to work from her December 2009 automobile injury in March 2010, and that her injuries did not prevent her from performing all the duties of her job with the respondent up to the date of this stipulated accident, November 7, 2011.

With respect to the auto accident, petitioner treated with Dr. Thomas McNally of Suburban Orthopaedics. (PX2) Those records show that the petitioner was last seen prior to her work injury on June 9, 2011. At that time, she had no complaints to her left leg as she had full motion without any pain.

The record did show that the petitioner had positive sciatic notch tenderness on her right side as well as positive straight leg raise. Consistent with those records, the petitioner testified that immediately prior to her stipulated work injury of November 7, 2011, she was not experiencing continuing pain or numbness into her left leg or foot. She admitted to experiencing some pain and numbness down her right leg at the time of her work injury. Again, petitioner testified, and the medical records confirm, she was fully capable of performing the functions of her job with the respondent prior to November 7, 2011.

The parties have stipulated that on November 7, 2011, the petitioner sustained an accident that arose out of and in the course of her employment. On that date, she was struck from behind by a falling patient while she was standing at the nurse's station. Petitioner testified that the patient slammed into her left arm while falling. The petitioner twisted around and caught the patient. The petitioner testified that she first used her right hand, and then both hands, to catch the patient. She then had to suspend the patient's weight while trying to gently lower her to the ground for emergency services. Petitioner testified that she spent the next ½ hour attending to this emergency situation. She began to feel pain in her left shoulder and arm and into her lower back. She was advised to report to the emergency department of the hospital.

In the emergency room, the petitioner provided a history consistent with her testimony. (PX1) She complained of left shoulder pain and lower back pain. She denied any new numbness and tingling into her lower legs and did advise the hospital personnel that she had previously been diagnosed with a "bulging disc". X-rays were taken of her left arm. She was provided pain medication and advised to follow up with occupational health. Petitioner remained under the care of respondent's occupational clinic for two more treatments. It is stipulated that she remained off of work through February 12, 2012.

Petitioner continued to experience increased pain in her low back radiating into both hips and into both shoulders. She sought treatment from Dr. McNally of Suburban Orthopaedics due to his familiarity with her prior condition. (PX 2) Dr. McNally first saw petitioner for her work injury on November 14, 2011. He examined her and prescribed physical therapy, which petitioner performed at Good Samaritan Hospital. She returned to Dr. McNally on November 28, 2011. Petitioner stated that the pain in her back since the work injury of November 7, 2011 was worse than it had been following the MVA. She described her prior pain as "background noise" compared to what she was experiencing now. The pain was now radiating to the left hip also. She further complained of the onset and worsening of pain in her right shoulder. Dr. McNally continued the petitioner off of work and referred her to his associate, Dr. Howard Freedberg, for her right shoulder complaint.

On November 28, 2011, the petitioner was seen by Dr. Freedberg. Petitioner told Dr. Freedberg that she initially felt some increased pain in her right shoulder after the accident of November 7, 2011, but that the pain increased over the next week. The original pain in her left shoulder/arm had subsided. Petitioner also stated that on that date she was suffering from bronchitis and that her coughing was making the shoulder pain worse. Dr. Freedberg noted that the petitioner already had a pre-existing unrepaired right labral tear and tendonitis. Petitioner was continued in physical therapy and told to remain off of work. Per Dr. Freedberg's order, an MR images of petitioner's right shoulder were taken on December 7, 2011.

On December 8, 2011, the petitioner returned to Dr. McNally who ordered an MRI and EMG of petitioner's lumbar spine. The EMG was performed on December 20, 2011 and showed chronic L5-S1 changes on the right and early L5-S1 changes on the left, as well as mild denervation on the left at L5-S1. The MRI was administered on December 23, 2011 showed a small disc protrusion at L4-5 with mass effect on the L4 nerve root.

Petitioner returned to Dr. McNally on January 5, 2012 with complaints of constant low back pain. She experienced intermittent numbness in both feet. Dr. McNally read the MRI and EMG and found them to be consistent with petitioner's complaints. Dr. McNally opined that the petitioner had manageable low back pain and right hip pain after her motor vehicle collision of December 11, 2009. Her pain was tolerable until the stipulated work injury of November 7, 2011, which aggravated the low back pain and caused new onset of left leg pain. Dr. McNally went on to state that the November 7, 2011 accident did not cause the degenerative changes in the petitioner's lumbar spine, but certainly aggravated and accelerated the pre-existing, previously asymptomatic degenerative lumbar spine condition that now caused her current condition of ill-being. Petitioner was referred to Dr. Eugene Lipov for pain management.

On January 9, 2012, the petitioner was seen by Dr. Freedberg for her right shoulder. Dr. Freedberg noted improvement and released the petitioner to light duty. However, it is stipulated that the petitioner was not yet released to return to work by Dr. McNally for her lower back and leg complaints.

On January 27, 2012, the petitioner received the first epidural steroid injection to her lower back from Dr. Lipov. On February 2, 2012, the petitioner returned to Dr. McNally to discuss the results of her first injection. Petitioner noted that her leg symptoms improved a little, but her back pain continued. Petitioner asked to be released to return to work. Dr. McNally released petitioner with the restriction of no lifting over 30 pounds and advised her to re-commence physical therapy and to continue with Dr. Lipov.

Petitioner testified that she returned to work as a Front Desk Assistant. This job required her to spend 80% of her day on her feet. The pain and soreness in her lower back and into her legs increased. Petitioner was only able to work until March 2, 2012, at which time TTD was restarted.

On March 6, 2012, the petitioner returned to Dr. McNally and stated that her back pain increased down her buttocks bilaterally through her hips and into her feet, which go numb after five to ten minutes. She reported difficulty driving due to the numbness in her feet. Dr. McNally advised the petitioner to discontinue physical therapy and to continued treatment with Dr. Lipov. Dr. McNally opined that the petitioner was unable to return to work. Petitioner also saw Dr. Freedberg on March 7, 2012 at which time she complained of right-sided neck pain. Dr. Freedberg returned petitioner to full-duty work with respect to her neck and shoulder symptoms only.

Petitioner received her second lumbar epidural steroid injection on March 13, 2012 and returned to Dr. McNally on March 20, 2012. Petitioner reported two to three days of good relief until her symptoms returned to baseline. Petitioner continued to experience numbness into her feet making driving difficult. Numbness also made walking up and down stairs difficult. Petitioner was advised to return to Dr. Lipov for another injection and to resume physical therapy. Various possible surgical procedures were also discussed. Petitioner remained unable to return to work. Petitioner received her third lumbar epidural steroid injection from Dr. Lipov on April 10, 2012. Again, the injection provided limited temporary relief.

On April 23, 2012, the petitioner was seen by Dr. Jay Levin, pursuant to §12 of the Act. Dr. Levin noted that the petitioner had constant back pain with tingling in her toes and the bottom of her feet. She had difficulty driving and walking stairs. He noted severe range of motion deficiencies as well as a positive Faber's sign for low back pain and positive Hoover's sign bilaterally. Dr. Levin also noted various pathologies on the MRI of December 23, 2011. Despite these findings, Dr. Levin opined that as a result of the incident of November 7, 2011, petitioner suffered a lumbar myofascial strain. He then dismissed the MRI findings as long-standing and not related to the stipulated work injury. Dr. Levin referred to OGD guidelines for "Sprains and Strains of Other and Unspecified Parts of Back" without further discussion. It was Dr. Levin's opinion that the petitioner was at maximum medical improvement

("MMI") and was able to return to work at full duty. Based upon Dr. Levin's opinions, the petitioner's benefits under the Act were stopped as of May 15, 2012.

Petitioner was re-examined by Dr. McNally on May 17, 2012. Dr. McNally noted that the petitioner continued to experience lower back pain, weakness in the right leg and weakness in the left calf as well as shooting pain down her right leg into her foot. Dr. McNally reviewed the report of Dr. Levin and noted his disagreement with the assessment that the petitioner had reached MMI. Dr. McNally opined that the petitioner's pain may be originating from the L4-5 & L5-S1 discs, facet joints, nerve root impingement or a combination of those structures. Dr. McNally ordered a closed MRI of the lumbar spine because the last MRI was over six months old. Because petitioner had lost all her benefits, she asked to be returned to work in a limited capacity. Dr. McNally released her with significant restrictions of no lifting over 10 pounds, no stooping, kneeling, repeated bending or climbing.

Petitioner returned to the respondent and sought an accommodation of her light-duty restrictions. Petitioner provided un rebutted testimony that she was told that there were no jobs available within the respondent's entire network of facilities, either within her restrictions or at any level. Petitioner was told to re-apply for a position within her restrictions, which she did. No suitable light-duty employment has been offered. Respondent has further refused to offer the petitioner a full-duty return to work based upon Dr. Levin's opinions.

Petitioner has been forced to seek additional medical attention through her medical insurance. Petitioner's primary care physician, Dr. Andreoni, referred the petitioner to spine specialist, Dr. Mataragas. Dr. Mataragas also ordered a new lumbar MRI, which was administered on June 28, 2012. Dr. Mataragas has referred the petitioner for chiropractic care, which petitioner has yet to schedule as of the date of the arbitration hearing.

Petitioner testified that she continues to experience increased low back pain since the accident of November 7, 2011. The pain has increased the radicular symptoms in her right leg and has caused



new numbness and tingling in her left leg down to her feet. It is difficult for her to stand for long periods or drive a car. Her condition is not improving. Her treating physicians have returned her to work with significant restrictions, which the respondent cannot accommodate. Petitioner wishes to continue her treatment with Dr. McNally and Dr. Freedberg of Suburban Orthopaedics.

#### CONCLUSIONS OF LAW

##### F.

##### Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that the petitioner's current conditions of ill-being of her low back, right shoulder and left arm/left shoulder are causally related to the stipulated accident of November 7, 2011. The petitioner told Dr. Freedberg that the original pain in her left arm/shoulder had subsided. The petitioner candidly testified that she had previously sustained an injury to her right shoulder in 2002, which resulted in an unrepaired labral tear and tendonitis. She further admitted to the fact that her range of motion in the right arm was compromised prior to the time of the stipulated work injury. Petitioner also admitted to injuries sustained in the MVA, which occurred on December 11, 2009. That accident caused lower back pain and leg pain mostly to the petitioner's right leg and occasional, transitory numbness to her left foot. These facts are confirmed in the records of Dr. McNally.

However, the petitioner offered un rebutted testimony that she returned to work with the respondent in March 2010 after recovering, for the most part, from her injuries sustained in the automobile accident. She candidly testified to ongoing complaints of low back pain, which she characterized as "background noise". Petitioner did not deny experiencing some radicular pain in the right leg and occasional numbness into her left foot. It is un rebutted that these issues did not prevent her from performing all the functions of her job with the respondent from March 2010 through the date of her stipulated work injury, November 7, 2011. Further, the medical records show that the petitioner

had not been seen by her treating physician, Dr. McNally, since June 9, 2011 for any complaints arising from the MVA. The medical records from that date show minimal complaints to the petitioner's right leg and none to the left.

It is stipulated that the petitioner sustained an accident on November 7, 2011 when she was struck by, and then caught, a falling patient. The petitioner has consistently testified that since the accident, she has experienced increased pain in her low back, right leg and a new onset of numbness and tingling into her left leg down to the toes. The condition limits her ability to stand and walk stairs. It interferes with her ability to sleep and drive.

Respondent offered into evidence the report of Dr. Jay Levin. (RX 1) That report is inconsistent and incomplete. Specifically, Dr. Levin noted that the petitioner continues to suffer from pain in her low back and radicular symptoms in her legs. He noted positive findings during his exam and on the MRI. Yet, Dr. Levin still opined that the petitioner only suffered a sprain/strain injury. Dr. Levin's report goes to great lengths to ignore the main issue in this matter: whether petitioner's pre-existing condition was exacerbated or accelerated by the work injury. Classifying petitioner's injury as a mere strain/sprain, without discussion of the effects of that injury on her pre-existing lumbar and radicular condition, is of little probative value. Further, Dr. Levin's reference to OGD Guidelines is irrelevant when those guidelines also do not consider the petitioner's accepted pre-existing condition, which is the crux of the matter before the Commission.

The Arbitrator finds the opinions of the petitioner's treating physician, Dr. Thomas McNally, to be more persuasive than those of respondent's examining physician, Dr. Jay Levin. Dr. McNally has treated the petitioner since July 20, 2010, including treatment following petitioner's December 2009 MVA. (PX 2) He is intimately familiar with petitioner's condition prior to the stipulated accident of November 7, 2011, including the fact that the petitioner had not been treated by Dr. McNally for any right shoulder, low back or leg complaints since June 9, 2011. At that time, the petitioner complained of

right hip soreness, a bulge on the right side of her neck and a pulling pain down her right arm. An examination of both lower extremities noted minimal complaints to the right leg and no complaints to the left.

14EWC0159

Even if one of the medical witnesses was equivocal on the question of causation, it is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician. International Vermiculite v. Indus. Comm'n, 77 Ill. 2d 1, 394 N.E.2d 1166, 31 Ill. Dec. 789 (1979) *citing* Holiday Inns of America v. Indus. Comm'n (1969), 43 Ill. 2d 88, 89-90; Proctor Community Hospital v. Indus. Comm'n (1969), 41 Ill. 2d 537, 541.

Dr. McNally has continued to treat petitioner since the stipulated accident of November 7, 2011. He is the only physician to comment upon the petitioner's current condition as it relates to her pre-existing condition. Dr. McNally has opined as follows:

The work related injury on 11/7/11 did not cause the degenerative changes in the patient's lumbar spine. To a reasonable degree of medical and surgical certainty, the work related injury on 11/7/11 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, caused them to become symptomatic and require treatment.

(PX 2; office note of 11/23/11, 12/8/11, 1/5/12, 2/2/12, 3/6/12, 3/20/12 & 5/15/12)

The MRI of December 23, 2011 exhibits a focal disc protrusion toward the left at L4-5, which correlates clinically with the petitioner's left radicular complaints as per Dr. McNally's opinion. Further, the EMG of December 20, 2011 shows bilateral chronic L5-S1 radiculopathy, more prominent on the right and by Dr. McNally's interpretation, early acute left-sided L4-L5 radiculopathy. These findings are all consistent with the petitioner's current complaints of ill-being. Dr. McNally concluded that the petitioner had chronic low back pain and right lower extremity pain after the MVA of December 11, 2009. The pain was tolerable until the stipulated work accident of November 7, 2011, which aggravated her lower back pain and caused new onset of left leg pain. Dr. McNally's opinions appear to be consistent with the facts contained in the medical records and with petitioner's testimony. Dr. McNally

further opined that the petitioner is not at maximum medical improvement, requires additional treatment and is only able to return to work in a light-duty capacity of no lifting greater than 10 pounds, no stooping, no bending, no kneeling and no climbing.

To result in compensation under the Act, a claimant's employment need only be a causative factor in his condition of ill-being; it need not be the sole cause or even the primary cause. Tower Automotive v. Illinois Workers' Comp. Comm'n, 943 N.E.2d 153, 407 Ill. App.3d 427, 347 Ill. Dec. 863 (1<sup>st</sup> Dist. 2011) *citing* Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment." Caterpillar Tractor Co. v. Indus. Comm'n, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill. Dec. 6 (1982)

With respect to the petitioner's right arm and shoulder, the Arbitrator notes that Dr. Freedberg opined in his office note of February 2, 2012, that such condition does not limit petitioner's ability to return to work. Petitioner testified that the accident occurred on November 7, 2011 at "8:00, 8:30 p.m." Petitioner first presented to Good Samaritan Hospital Emergency Room at 11:48 p.m. The Good Samaritan Hospital ER records contain the following Nursing Triage Note:

*"11/07/11 22:48 Chief Complaint pt is c/o left shoulder/elbow and lower back pain s/p a patient falling on her at work here, pt works on psych. pt denies any new numbness/tingling to lower legs, pt has a bulging disc to lower back. cms intact, distal pulses noted. No ohter (sic) complaints"*

The Good Samaritan physician ordered x-rays of the left humerus, prescribed medication, advised her to follow up with her primary care physician and discharged her.

Petitioner testified that after the accident, her "left arm and shoulder up here were throbbing where she had flown into me." She further testified that her low back pain "was more like a dull ache before; and now it was -- it was even harder pain" and "it was more intense."

When asked about her right shoulder, petitioner testified that she experienced "increased pain" in her right arm and shoulder, and that such pain first started to "increase" on the day after the accident. On redirect examination of the petitioner, the following exchange took place:

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*Q: All right. Describe the progress of the right shoulder pain after the November 7, 2011 incident.*

*A: The pain in my right shoulder progressed slowly. I did have the exacerbation of - - an increase in pain because I was sick, and I did have bronchitis; and it was aggravating my whole right side. I couldn't even breathe without having pain in my rib cage and my shoulder, my clavicle area. So it was an increase in symptoms.*

*Q: Is it the right arm that you caught the young lady with?*

*A: Yes.*

In an Employee Report of Occupational Illness or Injury that petitioner completed on the date of accident, for "Part of Body Injured", Petitioner wrote: "Lt Arm/Elbow Shoulder Low Back." On November 8, 2011, at the occupational clinic, x-rays were ordered for bilateral shoulders. In a Suburban Orthopaedics pain diagram of November 11, 2011, petitioner indicated that she had aching pain in both shoulders. She gave the following history: "Was Injured when a patient with my back to hers and hers to mine had a seizure. Patient Fell Full Force Into My left arm. I turned around to catch her. Injured Shoulder and Low back." When Dr. Andreoni saw the petitioner on November 21, 2011, she wrote, in relevant part, the following: "11/7 injury at work. "caught patient who was having a seizure" strained her back and right shoulder and upper back."

The petitioner had not been treated by Dr. McNally for any right shoulder, low back or leg complaints since June 9, 2011.

The Arbitrator finds, by a mere preponderance of the weight of the credible evidence, that the petitioner's current condition of ill-being with respect to her right shoulder/arm is causally related to the stipulated accident of November 7, 2011.

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L.

**What temporary benefits are in dispute?**

The Arbitrator finds that the petitioner is entitled to TTD benefits from November 8, 2011 through February 12, 2012 and again from March 3, 2012 through August 17, 2012. It is further agreed that benefits under the Act were discontinued by the respondent on May 15, 2012 based solely upon the report of Dr. Levin, who found the petitioner to be at maximum medical improvement with no permanent restrictions.

As indicated above, the Arbitrator finds Dr. McNally's opinions to be more persuasive than those of Dr. Levin. Dr. McNally has found that the petitioner is not at maximum medical improvement and he continues to restrict her to light-duty work. It is uncontested that the petitioner has made herself available to the respondent to return to work within the restrictions provided by her treating physician. Respondent cannot accommodate those restrictions. Respondent cited its internal policy of not providing employment, after the passage of a certain period of time, to those injured in the course of their employment.

Petitioner's treating physician, Dr. McNally, has released petitioner to return to work for respondent with the restrictions of avoiding bending, stooping, lifting over 10 pounds and repetitive activities. During recross examination, petitioner testified that her work as a Unit Information Coordinator would not require her to perform such physical activities. She testified that she is, therefore, able to perform the essential job functions of a Unit Information Coordinator.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement. Interstate Scaffolding, Inc. v. Indus. Comm'n, 236 Ill.2d 132 (2010) (citing Westin Hotel v. Indus. Comm'n 372 Ill.App.3d 527, 542 (2007)); Land & Lakes Co. v. Indus. Comm'n, 359 Ill.App.3d 582, 594 (2005); F & B Manufacturing Co. v. Indus. Comm'n, 325 Ill.App.3d 527, 531 (2001), Archer Daniels Midland Co. v. Industrial Comm'n, 138 Ill.2d 107, 118 (1990)).

Notwithstanding the fact that petitioner is physically capable of returning to work as a Unit Information Coordinator (which job is no longer available), the Arbitrator finds that her condition has not yet stabilized, that is, she has not yet reached MMI. Therefore, the Arbitrator finds that petitioner is entitled to TTD benefits from November 8, 2011 through February 2, 2012 and from March 3, 2012 through August 17, 2012, which was the first date of the arbitration hearing.

J.

Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Arbitrator notes that the respondent's only objection to the medical bills (PX 5, group exhibit) is to liability. Based upon the Arbitrator's decision above, the respondent is ordered to pay those medical charges contained in PX 5. Pursuant to stipulation, the respondent shall pay these bills, in accordance with Section 8(a) and subject to Section 8.2 of the Act, directly to the providers. Respondent is entitled to any credit for payments previously made.

K.

Is Petitioner entitled to any prospective medical care?

The Arbitrator finds that the petitioner has yet to reach maximum medical improvement and is entitled to continuing treatment with Dr. McNally and Dr. Freedberg. The Arbitrator bases this finding

upon the previous finding that the opinions of Dr. McNally and Dr. Freedberg are consistent with the facts presented herein and that the petitioner has yet to attain maximum medical improvement. Dr. McNally specifically notes that there is more treatment to be offered to help cure or relieve the petitioner's condition of ill-being. Therefore, the Arbitrator orders the respondent to authorize, and pay the reasonable charges for, the treatment that Dr. McNally and Dr. Freedberg have recommended for petitioner's low back and right shoulder, subject to Section 8.2 of the Act.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF WILL )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHERLYN ALLEN,

Petitioner,

**14IWCC0160**

vs.

NO: 12 WC 20058

LAIDLAW TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, and nature and extent and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that the Petitioner sustained no permanent partial disability as the result of her September 19, 2011 work-related accident.

Ms. Allen sustained an undisputed work-related accident while working as a bus aide. On September 19, 2011, the bus in which the Petitioner was riding made an emergency stop causing her to stumble forward. Petitioner was seen by Dr. Ronald Hickombottom of MedWorks Occupational Health on September 20, 2011. Dr. Hickombottom diagnosed Petitioner with a left quadriceps strain, left rotator cuff sprain with mild impingement, left knee sprain and a mild left lumbar sprain. RX.4. Ms. Allen presented for follow-up with Dr. Hickombottom on September 27, 2011. She reported overall improvement in regards to her left thigh, left shoulder, left knee and left lumbar area. Examination of the left quadriceps revealed very mild tenderness on direct palpation. Both internal and external rotation of the hip along with abduction and adduction were normal. She could bear full weight without any significant pain. There was good alignment of the left shoulder with very minimal tenderness. Examination of the lumbar spine revealed good

14IWCC0160

alignment. There was no evidence of lateral shift or scoliosis. The impression was resolved left quadriceps strain, left rotator cuff sprain, left knee sprain and lumbosacral sprain. She was discharged from care and advised that she could work full-duty without restriction. PX.27. Ms. Allen testified that there is nothing from the September 19, 2011 accident that still bothers her. T.40.

The evidence establishes that the Petitioner suffered minor sprains as the result of the accident. Her injuries resolved shortly after the accident. The Petitioner's testimony establishes that she has no permanent injury as the result of the accident. Therefore, the Commission modifies the Decision of the Arbitrator and awards the Petitioner no permanent partial disability benefits as the result of the September 19, 2011 accident.


IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 15, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

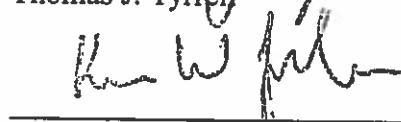
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **MAR 05 2014**

MJB/tdm  
O: 2-11-14  
052

  
Michael J. Brennan

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

ALLEN, CHERLYN

Employee/Petitioner

Case#

**14IWCC0160**

12WC020058

07WC051218

LIDLAW TRANSIT AUTHORITY

Employer/Respondent

On 4/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1920 BRISKMAN BRISKMAN & GREENBERG  
SUSAN FRANSEN  
175 N CHICAGO ST  
JOLIET, IL 60432

1120 BRADY CONNOLLY & MASUDA PC  
LEO PLUCINSKY  
ONE N LASALLE ST SUITE 1000  
CHICAGO, IL 60602

STATE OF ILLINOIS )

)SS.

COUNTY OF Will )

**14IWCC0160**

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**Cherlyn Allen**

Employee/Petitioner

v.

**Laidlaw Transit Authority**

Employer/Respondent

Case # **12 WC 20058**

Consolidated cases: **07 WC 51218**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **December 17, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

FINDINGS

14IWCC0160

On 9/19/2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$9,028.24; the average weekly wage was \$173.62.

On the date of accident, Petitioner was 37 years of age, *married* with 1 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

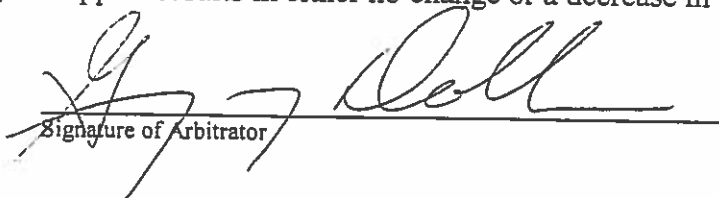
Respondent shall pay Petitioner the sum of \$173.62/week for a further period of 12.5 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused 2-1/2% loss of use of man as a whole.

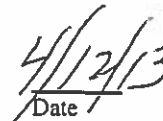
Per stipulation, the Respondent has agreed to pay the medical charges incurred from this accident.

Respondent shall pay Petitioner compensation that has accrued from September 19, 2011 through December 17, 2012, and shall pay the remainder of the award, if any, in weekly payments.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

  
Date

APR 15 2013

**FINDING OF FACTS:**

Petitioner was a 37 year old female, married with one child at the time of the accident. Petitioner testified that she was in good physical condition prior to October 24, 2007. She had never injured or had problems with her back before, and had been able to clean her house, go shop on a regular basis, walk, and drive without difficulty. She has been obese her entire life and on the date of hearing weighed about 465 pounds. Petitioner stated that on and before October 24, 2007, she weighed less, about 320 pounds. Petitioner provided that even though obese, she still was able to do every day activities as stated above. Petitioner had a work accident on

July 10, 2006 that involved her right foot and her right knee, which is one of the same body parts that she injured in this accident. There are however limited records from this incident. Her back was not involved. She also had carpal tunnel releases prior to the accident she had on September 19, 2011, both of which are not related to this claim.

On September 19, 2011, Petitioner was involved in a second work related vehicle accident. Petitioner testified that she was checking on one of the children on the bus when the driver slammed on the brakes. Petitioner stated she was thrown forward and she hit her left leg. She provided that the pain shot from her left leg up. She also provided that the incident irritated her back.

After the accident, Petitioner went to Silver Cross Hospital emergency room where she was treated and released. She then went to Med Works, a company clinic, on September 20 and September 27, 2011.

After this accident, Petitioner visited the ER at Silver Cross Hospital two more times, on December 22, 2011 and March 9, 2012. (PX 29) Her main complaints of pain on these visits were her right leg (only on December visit) and back. She also has been at regular work for Respondent since April 6, 2009.

On September 22, 2011, Dr. Butler authored a Section 12 examination report. Dr. Butler reported that an examination revealed Petitioner's lumbar spine was non-tender; her posture was normal; her straight leg raise testing was negative; she had no sciatic notch tenderness; and there was no paraspinal muscle spasm. Dr. Butler reported that Petitioner had normal strength in both legs, and no evidence of sensory loss. Her deep tendon reflexes in both legs had been normal. Dr. Butler diagnosed Petitioner as having a lumbar strain. Dr. Butler opined that Petitioner's current lumbar conditions were at her baseline level of comfort, and that Petitioner's current complaints were primarily related to her morbid obesity and physical deconditioning. Dr. Butler opined that Petitioner did not require work restrictions for her lower back. (RX 4) Petitioner admitted that she had again seen Dr. Butler on behalf of Respondent. She however stated that she was asked questions, but was not examined.

**In support of the Arbitrator's findings relating to (F), is the Petitioner's present condition of ill-being causally related to the accident/injury of September 19, 2011, the Arbitrator finds the following facts:**

Petitioner's present conditions are causally related to the work accident she had on September 19, 2011. The Arbitrator refers to his Decision in 07 WC 51218 for a full recitation of the medical history prior to the accident involved herein, and the subsequent treatment not directly related to this accident. The Arbitrator notes that while there were only three medical visits for this claim, this accident affected Petitioner's preexisting conditions from the October 24, 2007 case.

The Arbitrator finds that Petitioner was credible in her testimony and said testimony was unrebutted. Petitioner was still recovering from her October 24, 2007 work incident, when this accident happened. The work accident itself of September 19, 2011 is stipulated to/undisputed.

On September 19, 2011, Petitioner was checking on one of the children on the bus when the driver slammed on the brakes. Petitioner stated she was thrown forward and she hit her left leg. She provided that the pain shot from her left leg up. She also provided that the incident irritated her back. Petitioner went to Silver Cross Hospital ER. Upon presentation to the hospital, Petitioner was making lower back, left thigh, left knee and left shoulder complaints. She was discharged the same day. (PX 29)

On September 20, 2011, Petitioner went to the company clinic, MedWorks Occupational Health, for further medical care. After giving a consistent history, including disclosing she was on Naprosyn, Flexeril and ibuprofen, Petitioner was examined by Dr. Hickombottom who found some mild tenderness and impingement in the left shoulder, and tenderness and pain in the left knee, thigh and lower back regions. Dr. Hickombottom diagnosed left quadriceps strain; left rotator cuff strain with mild impingement; left knee sprain; and mild left lumbar strain. Petitioner was prescribed pain and inflammatory medication. The doctor recommended physical therapy to help her left quadriceps and left rotator cuff injury. Dr. Hickombottom also felt "this injury does meet the criteria to justify as a work related injury." (PX 27)

Petitioner followed up at MedWorks on September 27, 2011 and was doing much better. She only had mild tenderness and pain complaints in the areas injured. She was discharged without physical therapy and was to follow up only on a per needed basis. Dr. Hickombottom diagnosed Pettitioner as having an essentially resolved left quadriceps strain, a left rotator cuff sprain, left knee sprain, and lumbosacral strain. (PX 27)

Based on the sequence of events, Petitioner's credible testimony and the opinion of Dr. Hickombottom, the Arbitrator finds that Petitioner's condition of ill-being, left quadriceps strain, a left rotator cuff sprain, left knee sprain, and lumbosacral strain, are causally related to the accident of September 19, 2011.

**In support of the Arbitrator's findings relating to (L), what is the nature and extent of the injuries the Petitioner sustained, the Arbitrator finds the following facts:**

For the reasons as stated above, the Arbitrator finds that as result of accidental injuries sustained on September 19, 2011, Petitioner is permanently disabled to the extent of 2-1/2% under Section 8(d)2 of the Act.

